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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/442,906	11/18/1999	SCOTT THOMAS MARCOTTE	EN999+121	6545
7590	03/18/2004		EXAMINER	
BLANCHE E SCHILLER ESQ HESLIN & ROTHENBERG P C 5 COLUMBIA CIRCLE ALBANY, NY 122035160			WILLETT, STEPHAN F	
			ART UNIT	PAPER NUMBER
			2141	
			DATE MAILED: 03/18/2004	
				16

Please find below and/or attached an Office communication concerning this application or proceeding.

P29

Advisory Action	Application No.	Applicant(s)
	09/442,906	MARCOTTE, SCOTT THOMAS
	Examiner	Art Unit
	Stephan F Willett	2141

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on March 10, 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) The period for reply expires ____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: ____.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) ____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-2, 9-11, 16-17, 24-26, 31-32, 39-41.

Claim(s) withdrawn from consideration: _____.

8. The drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.
9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. Other: _____.

DETAILED ACTION

Response to Amendment

1. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.
2. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.
3. Applicant suggests "traverse the characterization that the server can be the sender or the receiver of the data", Paper No. 15, Page 4, lines 9-10. This is cited to emphasize my point in that the role of server or client is commonly reversed depending on which device is providing the service as could the roles of the sender and receiver of data be reversed. Applicant argues "transmitting data between a file system of a server", but the direction of transmission is not clear, thus the "server" could be the client receiving data from sender/server. Also, the applicant early argued "read or write request" is enabled, thus the server sends or reads data, or receives or writes data. Thus, Applicant's arguments can not be held as persuasive regarding patentability.
4. Applicant suggests "without describing or suggesting the buffer swapping or callback", Paper No. 15, Page 8, lines 2-3. This section does not explicitly recites swap or callback, but the result is the same as noted by "using the client cache 12B to access a remote file", col. 4, lines 66-17 of Burnett and even for the same performance reasons. Thus, Applicant's arguments can not be held as persuasive regarding patentability.
5. Applicant suggests "buffer swapping" is not taught, but bypassing this "resides on the client", Paper No. 15, Page 9, lines 2, 5. As discussed above, the client or server can be on either

“side”, and the 112 rejection was made to highlight this distinction. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

6. The fact Hamilton has advance notice does not obfuscate the teachings of the other reference that does not have advance notice. Also, the limitations states “pattern of access” and Hamilton does not limit its teachings to “pattern of access” versus just knowing “that a reply from the server is coming” which is only timing that is not related to the pattern or manner data is accessed. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

7. Applicant suggests without having advance notice as novelty. “[The] specification, having described the whole, necessarily described the part remaining”, In re Johnson, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977), see also Ex parte Grasselli, 231 USPQ 393 (Bd, App. 1983) and “negative limitations extended to define the invention in terms of what it was not, rather than pointing out the invention”, MPEP 2172.05(I). A negative type limitation, that implicitly teaches other related parts remaining, to avoid obvious elements of a reference does not exude novelty of the whole. In this regard, computers do not have advance notice unless programmed to receive said notice, thus inherently a device or machine does not have advance notice unless instructed to have said notice. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.
9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.
10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.

sfw

March 16, 2004



RUPAL DHARIA
SUPERVISORY PATENT EXAMINER